

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANN O. THOMAS)	
Claimant)	
VS.)	
)	Docket Nos. 228,980 & 230,323
SUNSHINE BISCUITS, INC.,)	
Respondent)	
AND)	
)	
INDUSTRIAL INDEMNITY COMPANY and)	
CONTINENTAL INSURANCE COMPANY)	
Insurance Carriers)	

ORDER

Claimant appeals from the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated May 13, 1998, wherein the Administrative Law Judge found claimant had failed to prove accidental injury arising out of and in the course of his employment with respondent on the dates alleged.

ISSUES

On Docket No. 228,980, the issues are:

- (1) Whether claimant suffered accidental injury on the date alleged.
- (2) Whether claimant's accidental injury arose out of and in the course of her employment with respondent.
- (3) Whether claimant failed to provide written claim in a timely fashion.
- (4) Whether claimant provided notice of a series of accidents to respondent in a timely fashion.

- (5) Whether claimant suffered a subsequent aggravation.

On Docket No. 230,323, the issues are:

- (1) Whether claimant suffered accidental injury on the date alleged.
- (2) Whether claimant's accidental injury arose out of and in the course of her employment with respondent.
- (3) Whether claimant had a preexisting condition.
- (4) Whether claimant provided notice of a series of accidents to respondent in a timely fashion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant alleges two separate accidental injuries to her left knee. The first being a series of injuries from July 18, 1995, through December 9, 1997, in Docket No. 228,980. The second injury in Docket No. 230,323 is a series of injuries from March 21, 1997, through December 9, 1997. The E-1s filed by claimant did not allege a series of injuries. The E-1 filed on December 11, 1997, alleges a July 1995 injury to claimant's left knee when she hit her knee on a pole. The E-1 in Docket No. 230,323 filed January 5, 1998, alleges a single incident on March 21, 1997, when claimant's left knee hit the caser on line 201.

The Administrative Law Judge denied temporary total disability compensation and medical treatment, finding claimant had failed to prove a causal relationship between claimant's current condition and her alleged occupational incidents.

Claimant initially suffered injury on July 18, 1995, when she struck her left knee on a pole. She was provided medical treatment through Dr. Larry L. Ressler on that date. At that time, claimant reported to Dr. Ressler that her knee had swollen for no reason although his medical report of that same date does discuss claimant's striking the medial aspect of her left knee on a "pull," which the Appeals Board assumes is intended to be pole. The examination on that date revealed no heat, redness, swelling, bruising or effusion. X-rays were taken which were negative. Dr. Ressler returned claimant to unrestricted work activities as of July 19, 1995. Claimant sought no additional medical care for the knee until March 1997. The medical records of Dr. Ressler, when coupled with claimant's description of the injury, convinces the Appeals Board that claimant did suffer accidental injury arising out of and in the course of her employment when she struck her left knee on a pole on July 18, 1995, and this matter was reported to respondent's

representative, Mr. Jim Merrill. It is significant that the July 18, 1995, report of Dr. Ressler was directed to Mr. Merrill.

However, respondent contends claimant failed to provide written claim in a timely fashion pursuant to K.S.A. 44-520a. Claimant is obligated by statute to provide written claim within 200 days of the date of accident or within 200 days of the last date of medical treatment. As claimant's date of accident and her only medical treatment for this injury are the same date, claimant would have 200 days from July 18, 1995, to submit written claim. In this instance, the first written claim submitted was the E-1 filed by claimant on December 11, 1997, well beyond the 200-day statutory time limit. The Appeals Board therefore finds claimant failed to submit timely written claim and benefits for the July 18, 1995, accident are denied.

Claimant's contention that she suffered a series of ongoing injuries through December 1997 from this incident is not supported by the record as claimant failed to seek additional medical treatment for almost two years after the 1995 incident. The Appeals Board therefore finds claimant has not proven a series of injuries through December 9, 1997, from this accident, and the date of accident is the date of the specific traumatic event, July 18, 1995.

With regard to claimant's allegations of an injury on March 21, 1997, and a series through December 9, 1997, the Appeals Board must again look to the medical evidence. Claimant was examined on March 25, 1997, by Dr. Donald T. Mead. The claimant again reported she struck her knee on a rail and had discomfort. An examination, which included x-rays of the left knee, was reported as normal with no evidence of injury. Claimant was advised to use an ice pack on the knee three or four times a day and to return to full duty with no additional limitations.

Claimant sought no additional medical treatment until November 1997 when she again returned to Dr. Mead. Dr. Mead at this time diagnosed patellofemoral syndrome. Dr. Mead opined that there might be a reasonable argument that the type of injury she had to her knee in May could lead to patellofemoral syndrome but he was at a loss to explain why she would be asymptomatic for ten and a half months and then suddenly have symptoms without any further trauma. He stated he was unable to determine whether this was a work-related injury or not.

Claimant was examined by Dr. N. Preston Forester on March 18, 1997. At that time, she was complaining of discomfort in her left knee and told the doctor it had been in existence for a year and it was progressively worsening. Dr. Forester noted that claimant weighed 242 pounds at the time of the examination. There was no indication of any work-related traumatic incident or work-related aggravation at that time.

Claimant was then examined on December 1, 1997, by Dr. Mark J. Maguire. Dr. Maguire's history indicated left knee pain which had existed for as much as a year.

Claimant indicated no particular injury or incident which began the symptoms. The medical records noted that she worked at a job which was described as fairly sedentary. Dr. Maguire diagnosed a degenerative medial meniscus tear and recommended an arthroscopic examination of the knee. There was no indication of a work-related injury at that time.

Dr. Maguire, in his April 16, 1998, report to claimant's attorney, advised that claimant had degenerative changes in the knee including degenerative arthritis and possibly inflammatory arthritis. He requested claimant see a rheumatologist in order to ascertain whether the inflammatory arthritis was actually present. Dr. Maguire did speculate that, if claimant was involved in prolonged standing, walking, stair climbing, squatting and twisting activities on a daily basis, it could contribute to the symptoms. However, the information in the medical records indicated claimant's job duties were fairly sedentary.

With regard to claimant's March 1997 injury and the aggravation through December 9, 1997, the medical evidence is contradictory. On more than one occasion, claimant provided a history to the examining and treating doctors of no known injury. She does not describe striking her knee on an iron rail as was alleged in the E-1. In addition, the medical examination indicates a degenerative condition rather than a traumatic condition. Dr. Maguire, when asked about possible aggravations, agreed that heavy physical activity could possibly exacerbate claimant's degenerative condition but claimant's job description has been described in the medical records as being sedentary.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1997 Supp. 44-508(g). In this instance, the record is contradictory regarding not only causation but also any possible aggravation to claimant's knee. Claimant had a preexisting degenerative condition prior to the March 1997 accident. It is unclear from a medical standpoint whether claimant's knee was actually aggravated by work activities. It is also unclear from the medical records whether claimant suffered such an accidental injury on or about March 21, 1997, as claimant, during evaluations by two separate doctors, failed to advise of any work-related trauma on or about that date.

The Appeals Board finds claimant has failed to prove accidental injury arising out of and in the course of her employment on or about March 21, 1997, or thereafter. Therefore, the Appeals Board finds that the Order of the Administrative Law Judge denying claimant benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated May 13, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: David R. Hills, Lenexa, KS
Gary R. Terrill, Overland Park, KS
Mark E. Kolich, Kansas City, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director